



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

ADOPTION

MULTI-COUNTY AGENCY:
Investment Trust of California

A written comment period has been established commencing on **May 16, 2003** and closing on **June 30, 2003**. Written comments should be directed to the Fair Political Practices Commission, Attention Jeanette Turvill, 428 J Street, Suite 620, Sacramento, CA 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written

comments must be received no later than June 30, 2003. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the costs has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Section 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revisions and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Jeanette Turvill, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Jeanette Turvill, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by sections 82011, 87303, and

87304 of the Government Code to review proposed conflict of interest codes, will review the amended conflict of interest codes of the following agencies:

CONFLICT OF INTEREST CODE

AMENDMENT

STATE AGENCY:

Department of Water Resources

A written comment period has been established commencing on **May 16, 2003**, and closing on **June 30, 2003**. Written comments should be directed to the Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed amendment to the conflict of interest code will be submitted to the Commission's Executive Director for review, unless any interested person, or his or her duly authorized representative, requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed amendment will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced amendment to the conflict of interest code, proposed pursuant to Government Code section 87300, which designates, pursuant to Government Code section 87302, employees who must disclose certain investments, interests in real property, and income.

The Executive Director or the Commission, upon his or her own motion or at the interest of any interested person, will approve, or revise and approve, or return the amendment to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments, or comments, in writing to the Executive Director of the Commission, relative to review of the proposed amendment to the conflict of interest code. Any written comments must be received no later than **June 30, 2003**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses, or small businesses.

AUTHORITY

Government Code sections 82011, 87303, and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest code shall approve codes as submitted, revise the proposed code, and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 13. NEW MOTOR VEHICLE BOARD

NOTICE OF PROPOSED ACTION

NOTICE IS HEREBY GIVEN that the New Motor Vehicle Board of the State of California ("Board"), pursuant to the authority vested in it by Section 3050, subdivision (a) of the Vehicle Code, proposes to adopt section 551.10 and to amend sections 551.8, 553, and 553.40 of the regulations contained in Title 13 of the California Code of Regulations in order to improve and clarify processes and procedures for parties appearing before the Board, to formalize the Board's policy and practice of granting fee waivers to specified members of the Board's constituency, under specified conditions, and to permit payment of filing fees by means of credit cards.

PROPOSED REGULATORY ACTION

The Board proposes to adopt section 551.10 and to amend sections 551.8, 553, and 553.40, after consideration of all comments, objections, and recommendations regarding the proposed action.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

Prior to the publication of this notice, the Board considered the proposed text of the regulations at noticed meetings held on October 29, 2002, and January 8, 2003. Ten days prior to each meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to the Board's Public Mailing List, a list of approximately 150 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters. No comments by the public were received at the October 29, 2002 and January 8, 2003, General Meetings, and no further public discussions were held prior to publication of the notice.

PUBLIC HEARING

A public hearing to receive oral or written comments on these regulations will be held at the following time and place:

DATE: June 30, 2003
TIME: 10:00 a.m.
PLACE: New Motor Vehicle Board
Hearing Room #2
1507 21st Street, Suite 330
Sacramento, California 95814

At the hearing, any person may present statements or arguments orally or in writing via U.S. Postal Service mail, facsimile or electronic mail, relevant to the proposed action described in the Informative Digest. The hearing will continue until all oral and written comments are presented. The Board requests but does not require that a person who makes comments at the hearing also submit a written copy of their testimony at the hearing. Any person or business submitting a comment to the proposed regulation has the right to request a copy of the final statement of reasons.

WRITTEN COMMENT PERIOD

Notice is also given that any person interested may present statements or arguments in writing via U.S. Postal Service mail, facsimile or electronic mail, relevant to the proposed amendments to the agency officer named below at the address identified below on or before 5:00 p.m. on June 30, 2003. The Board will consider only comments received at the Board offices by that time. Submit comments to:

Howard Weinberg, General Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
(916) 445-2080
Fax: (916) 323-1632
E-mail: www.nmvb@pacbell.net

The official record of the rulemaking procedure will be closed at 5:00 p.m. following the conclusion of the public hearing on June 30, 2003. Written comments received after 5:00 p.m. on June 30, 2003, will not be considered unless an extension of time in which to receive written comments is announced at the public hearing.

AUTHORITY AND REFERENCE

Authority cited: Sections 3015, 3016, 3050(a), and 3050.5, Vehicle Code. Reference: Sections 3050(c), 3051, 3060, and 3062, Vehicle Code; Sections 11420.30 and 11470.50, Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 3050, subdivision (a) authorizes the Board to adopt rules and regulations governing such matters as are specifically committed to it.

It is the mission and vision of the Board, as adopted by its members, to: resolve disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner; safeguard for the Board's constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes which ultimately improves relations and reduces the need for costly litigation; and, develop methods that further improve the delivery of Board services in a timely and cost-effective manner.

The Board proposes to adopt section 551.10 to the regulations contained in Title 13 of the California Code of Regulations in order to implement and make specific Vehicle Code section 3015, formalize the procedure for litigants to make motions for change in venue and provide for Board recovery of travel and hearing facilities' costs when the party requesting the change cancels the proceeding at the new venue.

The Board proposes to amend section 551.8 to the regulations contained in Title 13 of the California Code of Regulations to provide explicit regulatory authority for the pre-hearing dismissal of protests and make procedures and the authority for protest dismissals consistent with that for appeals and petitions.

The Board proposes to amend section 553 to the regulations contained in Title 13 of the California Code of Regulations to provide explicit regulatory authority to waive Board fees for manufacturers that do not sell vehicles and/or have dealers in California. The Board's authority for collection of fees is in Vehicle Code section 3016, as implemented and made specific by section 553. The statute and implementing regulation are silent on issues of exempting certain manufactures or distributors from Board fees. The Board as a matter of policy, and in practice, does not collect fees from manufacturers or distributors that do not sell vehicles and/or have dealers in California. This

regulation will implement, and provide the Board with authority for current equitable practices and procedures.

The Board proposes to amend section 553.40 to the regulations contained in Title 13 of the California Code of Regulations to provide explicit regulatory authority to permit litigants before the Board to pay filing fees by means of a credit card payment. Accepting credit card payments would also bring the Board into compliance with the provisions of the State Payment Card Act ("Act"), Government Code sections 61606166. The Act, passed in 1995, requires that all state agencies, with limited exceptions, accept credit cards or other direct payment devices for goods and services. Technically, the Board is currently in compliance with the Act pursuant to the Department of Motor Vehicles' participation. The Act provides in pertinent part as follows:

"The Legislature finds and declares that there are costs associated with all forms of payment, including cash and checks. The Legislature further finds and declares that by accepting payment by credit card or other payment devices, state agencies will be able to take advantage of new technologies that will improve their efficiency and will increase consumer convenience and choice by providing state consumers with an alternative method of payment."

The Act does not specify or require that all transactions be processed via credit card.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following determinations:

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation.

LOCAL MANDATE

The proposed regulatory action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT STATEMENT

The proposed regulatory action imposes (1) no cost or savings to any state agency; (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; (3) no other non discretionary cost or savings to local agencies; and (4) no costs or savings in federal funding to the state.

EFFECT ON BUSINESSES

The Board has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in making this determination.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The cost impact of the proposed regulatory action is expected to be inconsequential on directly affected private persons. The Board expects no cost impact on directly affected businesses. The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES

The adoption of this regulation will neither create nor eliminate jobs or businesses in the State of California, will not result in the elimination of existing businesses, and will neither reduce or expand businesses currently doing business in the State of California.

EFFECT ON HOUSING COSTS

The proposed regulatory action will have no impact on housing costs.

EFFECT ON FEDERAL LAW

The proposed regulatory action will not duplicate or conflict with any federal law.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

At both the October 29, 2002, and the January 8, 2003, General meetings, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. However, the Board President, Frederick (Fritz) Hitchcock invited and encouraged the submission of written and oral comments. Furthermore, Mr. Hitchcock indicated that the Board, in instructing staff to go forward with the proposed rulemaking, did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the

proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

CONTACT PERSON/BACKUP CONTACT PERSON

Please direct inquiries concerning the substance of the proposed action, requests for copies of the proposed text (the "express terms") of the regulation, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to:

Howard Weinberg, General Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
Telephone: (916) 445-2080

In the event the Contact Person is not available, inquiries concerning the substance of the proposed action, requests for copies of the proposed text (the "express terms") of the regulation, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based may be directed to the following Backup Contact Person:

Robin Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
Telephone: (916) 445-2080

AVAILABILITY OF INFORMATION VIA THE INTERNET

Information regarding the proposed amendments may be obtained from the Board's website: www.nmrvb.ca.gov.

STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The express terms of the proposed action are written in plain English and are available from the contact person named in this notice. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline to indicate additions, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the initial statement of reasons and the location of public records, including reports, documentation, and other materials, related to the proposed action.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period and public hearing, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full, modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the Board adopts the resulting regulation. Requests for copies of a modified regulation should be addressed to the Board contact person identified in this notice. The Board will accept written comments on the modified regulation for 15 days after the date on which it is first made available to the public.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons may be directed to the Contact Person or the Backup Contact Person listed in this Notice, or may be obtained from the Board's website: www.nmrvb.ca.gov.

TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, Hearing Room, Room 100, 400 R Street, Sacramento, CA 95814 at 1:30 p.m., on **Tuesday, July 1, 2003**. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on **Monday, June 30, 2003**, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section 2854 [Vocational Nursing (VN)]; and Section 4504 [Psychiatric Technician (PT)] of the Business and Professions

(B&P) Code, and to implement, interpret or make specific section 2882 and section 2875 (VN); and section 4531 and section 4520 (PT) of said Code, the Board is considering changes to Division 25 of Title 16 of the California Code of Regulations (CCR) as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Pursuant to B&P section 2854 (VN); and B&P Code section 4504 (PT), the Board may adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry out the provisions of these chapters.

The Board, having adopted concepts to amend its regulations on April 12, 2002 (VN); September 6, 2002 (VN); February 21, 2003 (VN and PT); and April 11, 2003 (VN), proposes the following amendments relative to (1) education; and (2) enforcement:

(1) Proposed Education Regulatory Changes

The Board proposes amendments to Article 5, sections 2526, 2529, 2532, 2533 and 2534, relative to schools of vocational nursing (VN); and to Article 5, sections 2581, 2584, 2586, 2587, 2588 and 2588.1, relative to psychiatric technician (PT) schools.

Section 2526, VN; and section 2581, PT, specify the procedures for accreditation for VN and PT programs, and specify the time period in which a program may admit alternate students. Alternate students may be admitted in each new class to replace students who drop out, and may participate in class sessions until the commencement of clinical experience in clinical facilities.

Attrition occurs during the initial laboratory experience because some students are unable to meet the demands of the nursing program and drop out. The admission of alternate students enables programs to educate a maximum number of students given available resources.

Proposed amendments to section 2526(a)(14) VN; and section 2581(a)(14) PT, permit alternate students to participate in clinical experience in the campus skills laboratory. The proposal limits the number of alternate students a program may enroll; specifies that once clinical experience in clinical facilities is initiated, the number of students in the class must be within the program's Board-approved class size; and requires that alternate students must be informed in writing of their alternate status.

Section 2529, VN; and 2584, PT, specify the faculty qualifications for VN and PT programs, and specify that "persons of other disciplines" may teach curriculum content. The regulation states that any person who has the qualifications to teach in a community college or a state university in California or holds a baccalaureate degree in the field related to the

curriculum content taught, or meets the requirements for a vocational education credential to teach "non-nursing" courses such as Anatomy and Physiology, Pharmacology or Nutrition, may be additional faculty. However, it is unclear whether nurses or PTs may be considered "additional faculty."

Proposed amendments to section 2529(c)(4) VN; and section 2584(c)(4) PT, more fully carry out the intent of the regulation by specifying that, with qualifying education, "registered nurses," "licensed vocational nurses," and "PTs" may be additional faculty.

Section 2584, PT, also specifies the faculty qualifications for accredited PT programs. As currently written, registered nurses are not included in the criteria for qualifying as a "teacher assistant" in a PT program.

Proposed amendment to section 2584(c)(5)(A) and (B), PT, adds licensure as a registered nurse to the qualifications for teacher assistant in a PT program. The amendment corrects an inadvertent omission in the regulations, and brings them parallel to VN regulations.

Section 2532, VN; and 2586, PT, specify the number of required curriculum hours for accredited VN and PT programs, and additionally specify the maximum length of a school day. Currently, the maximum length of the school day allowed by regulation is eight hours.

Most clinical facilities have 12-hour shifts in order to maximize staffing efficiency. Students limited to a maximum of 8 hours-per-day clinical experience are deprived of valuable "real life" clinical experience. When students leave before the actual end of a shift, the nursing staff is interrupted and students' learning is disrupted by a lack of continuity. In addition, some clinical facilities refuse to accept students who cannot complete a full 12-hour clinical shift.

Proposed amendments to section 2532(c), VN; and section 2586(c), PT, modify the required curriculum hours to permit 12-hour days for clinical experience, only; school days which consist of theory classes or a combination of theory and clinical experience may not exceed eight hours.

Section 2533, VN; and section 2587, PT, specify the required curriculum content for accredited VN and PT programs and additionally specify which courses may be taught by "non-nurses" (VN); and by "other professional instructors" (PT).

Proposed amendments to section 2533(e), VN; and section 2587(e), PT, delete the term "non-nurse" (VN); and the term "other professional instructors" (PT), and replaces them with the term "additional faculty."

Section 2534, VN; and section 2588, PT, specify the required clinical experience for accredited VN and PT

programs, and limit the percentage of time which may be applied to clinical experience during the evening shift to fifty percent, except by Board-approval.

Clinical facilities are increasingly impacted with patients and students. Board-approval of greater than fifty percent evening clinical evening hours has become more and more commonplace as programs struggle to achieve the number of clinical hours required in the curriculum content. When the regulations were originally promulgated, patient care performed during evening hours was different and less complex than that performed during the daytime hours, and therefore limited student learning experiences. As the severity of illness of hospitalized patients increases, care given on the day shifts and on the evening shifts has become the same. Required learning experiences can now be garnered on either shift. Deleting the requirement that programs obtain Board-approval for greater than fifty percent evening clinical hours would permit programs the choice of using either the day shift or the evening shift to obtain clinical experiences for their students, and will facilitate scheduling changes based on unanticipated needs of the program or clinical facility.

Section 2588.1, PT, specifies the general requirements for clinical preceptorships. With prior Board-approval, PT programs may offer an optional clinical preceptorship during the last nine weeks of the program.

The proposed amendment to section 2588.1(c) corrects an inadvertent error by deleting the term "licensed vocational nurse" in the meaning of "preceptor," and replacing it with the term "psychiatric technician."

(2) Proposed Enforcement Regulatory Changes

Article 4, section 2524 (VN), and Article 4, section 2579.10 (PT), specify the disciplinary guidelines for licensed vocational nurses (LVN) and PTs. To establish its Consumer Complaint Disclosure Policy in regulation, the Board proposes to add section 2524.1, VN; and section 2579.11, PT, to Article 4.

Protection of the health, safety, and welfare of California consumers is the Board's highest priority. To ensure such protection, the Board is authorized to investigate complaints of unprofessional conduct and unsafe, incompetent practice by LVNs and PTs.

Pursuant to the California Government Code (Public Records Act), the public has a distinct right to access information in the government's possession. However, unconditional access is not authorized. Specific information pertaining to complaints alleging misconduct by licensees and relevant investigations are exempt from disclosure.

The Board initially adopted a policy relative to complaint disclosure on May 14, 1993. In July 2001, the Department of Consumer Affairs (DCA) introduced discussion of consumer complaint disclosure standards. The intent of establishing such standards was enhancement of consumer protection. After extensive feedback from boards, bureaus, and the public, "Recommended Minimum Standards for Consumer Complaint Disclosure" were adopted by the DCA in July 2002. The DCA recommended that all boards use the standards as a framework for the development of specific standards and/or a complaint disclosure policy by each board.

In February 2003, after careful consideration of the recommended standards, the Board adopted a revised Consumer Complaint Disclosure Policy. The policy clarifies specific information that may be disclosed relative to complaints against licensed vocational nurses and psychiatric technicians while maintaining the integrity of investigations and/or prosecutions.

Proposed amendments to section 2524.1, VN; and section 2579.11, PT establish the Board's Consumer Complaint Disclosure Policy in regulation by reference.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Surveys of VN and PT program directors and employers of LVNs and PTs, as well as a review of current healthcare literature were relied upon in proposing the adoption of these regulations.

It is projected that there will be no reporting, recordkeeping or other compliance requirements resulting from the proposed action.

The Board has not identified proposed alternatives that would lessen any adverse economic impact on business and invites you to submit such proposals. Submissions may include the following considerations:

- (A) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

- (B) Consolidation or simplification of compliance and reporting requirements for businesses.
- (C) The use of performance standards rather than prescriptive standards.
- (D) Exemption or partial exemption from the regulatory requirements for businesses.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The proposed amendments do not alter staffing or equipment needs in any small business.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative to the regulation would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kim Frankland, Administrative Assistant
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No.: (916) 263-7848
Fax No.: (916) 263-7859
E-Mail Address: Kim_Frankland@DCA.CA.GOV

The backup contact person is:

Name: Suellen Clayworth, Nursing Education Consultant
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No.: (916) 263-7841
Fax No.: (916) 263-7859
E-Mail Address: Suellen_Clayworth@DCA.CA.GOV

Materials regarding this proposal can be found at www.bvnpt.ca.gov.

GENERAL PUBLIC INTEREST

AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER APPROVAL OF THE PROPOSED 2003 STATE IMPLEMENTATION PLAN FOR PARTICULATE MATTER IN THE SAN JOAQUIN VALLEY, INCLUDING NEW STATE STRATEGIES TO REDUCE EMISSIONS

The Air Resources Board (Board or ARB) will conduct a public hearing at the time and place noted below to consider the approval of the proposed 2003 plan to attain the federal standards for inhalable particulate matter (PM10) prepared by the San Joaquin Valley Unified Air Pollution Control District (District), as well as a State commitment for additional emission reductions to support this plan. If adopted,

ARB will submit both of these elements to the U.S. Environmental Protection Agency (U.S. EPA) for approval as a revision to the California State Implementation Plan (SIP).

DATE: June 26, 2003

TIME: 9:00 AM

PLACE: In-Person
San Joaquin Valley Unified
Air Pollution Control District
1990 East Gettysburg Avenue
Fresno, California

Via Videoconference
District Northern Region Office
4230 Kiernan Avenue, Suite 130
Modesto, California

District Southern Region Office
2700 M Street, Suite 275
Bakersfield, California

These items will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 26, 2003, and may continue at 8:30 a.m., June 27, 2003. These items may not be considered until June 27, 2003. Please consult the agenda for the meeting, which will be available at least 10 days before June 26, 2003, to determine the day on which these items will be considered.

If you have special accommodation or language needs, please contact ARB's Clerk of the Board at (916) 322-5594 or sdorais@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Americans with Disabilities Act Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

BACKGROUND

The federal Clean Air Act (Act) sets plan provisions, plan submission schedules, and attainment deadlines for areas that violate the 24-hour and annual average National Ambient Air Quality Standards for PM10. The San Joaquin Valley was classified as a serious PM10 nonattainment area with an attainment deadline of December 31, 2001. On July 23, 2002, U.S. EPA made a final finding that the San Joaquin Valley failed to attain the PM10 standards by that deadline. As a result, the State must submit a SIP revision that provides for attainment by the most expeditious date practical and achieves a five percent annual reduction of PM10 or PM10 precursor emissions until the standards are achieved.

In the San Joaquin Valley, high particulate levels are due to the combination of directly emitted particles (from dust and soot) and aerosol droplets formed in the atmosphere by precursor chemicals (from a variety of sources, such as fuel combustion, livestock operations, and vegetation). The SIP relies on extensive data gathered during field studies done in the Valley in 1995 and the comprehensive California Regional Particulate Air Quality Study conducted in 1999–2001. Based on this science, the attainment assessment in the SIP shows that reducing emissions of direct PM10 and the precursor nitrogen oxides (NOx) is the most effective way to attain the standards in the region. The SIP responds with a multi-pollutant control strategy that provides for attainment by 2010, the earliest feasible date.

DESCRIPTION OF THE PROPOSED SIP REVISION

To satisfy the requirements of the Act, the proposed SIP revision consists of the following elements:

State SIP Element

Adopted State and federal regulations for on-road vehicles and off-road equipment will cut San Joaquin Valley NOx emissions by over 140 tons per day (TPD) between 1999 and 2010, and reduce other PM10 contributors as well. To support this SIP, ARB staff is proposing that the Board commit to achieve an additional ten TPD of NOx and 0.5 TPD of direct PM10 reductions in the San Joaquin Valley by 2010. Staff is also proposing a commitment to develop statewide control measures for Board consideration (affecting passenger vehicles, heavy trucks and buses, and off-road equipment) and improvements to the Smog Check program for implementation by the Bureau of Automotive Repair. The emission reduction commitment could be achieved by adoption of these or other State measures. The State measures are a subset of the Proposed 2003 State and Federal Strategy for the California SIP that ARB will consider later this year. The State's proposed commitments for the San Joaquin Valley PM10 SIP are described in Section I, Chapter D of the comprehensive strategy document. Only the emission reduction commitment for the San Joaquin Valley PM10 SIP and the associated measures identified in this portion of the document will be considered by the Board at its June meeting.

Local SIP Element

The District staff released a draft SIP on March 25, 2003. The District prepared the technical elements of the plan in consultation with ARB, U.S. EPA, and local transportation agencies. The draft SIP reflects 20 TPD of NOx reductions from adopted District rules for stationary and areawide sources, as well as proposed local commitments to achieve over 50 TPD of

additional PM10 reductions, over 30 TPD of NOx reductions, and six TPD of sulfur oxides reductions by 2010. The local strategy affects sources under District jurisdiction, including agriculture operations, industrial facilities, fugitive dust, residential woodburning, as well as on-road vehicles through transportation control measures to be implemented by the county Councils of Government.

ARB staff has reviewed the draft SIP and expects that the District will make any necessary revisions for federal approvability in the revised version due out by May 19, 2003. ARB staff will review the District's final proposed plan following its release and will publish an ARB staff report no later than May 23, 2003. The ARB hearing described in this notice will be held only if the District's Governing Board adopts the SIP prior to June 26, 2003.

AVAILABILITY OF DOCUMENTS

The Proposed 2003 State and Federal Strategy for the California State Implementation Plan will be publicly available on May 12, 2003. ARB staff's report to the Board with its evaluation and recommendations on the San Joaquin Valley 2003 PM10 Plan will be publicly available on May 23, 2003. Both documents will be posted on the ARB's website at <http://www.arb.ca.gov/planning/sip/sip.htm>. In addition, written copies may be obtained from the Board's Public Information Office, 1001 I Street, 1st Floor, Environmental Services Center, Sacramento, California 95814, (916) 322-2990.

PUBLIC PROCESS

The hearing will be conducted in two parts. First, the Board will consider approval of the State commitment for additional emission reductions and measure development to support the San Joaquin Valley 2003 PM10 SIP. Second, the Board will consider approval of the San Joaquin Valley 2003 PM10 Plan as a SIP revision. If adopted by ARB, both of these elements will be submitted to U.S. EPA as a revision to the California SIP.

During each part of the hearing, ARB staff will make an oral presentation and present recommendations to the Board. Interested members of the public may also present comments orally or in writing at the meeting, and in writing or by e-mail before the meeting. To be considered by the Board, written comments submissions not physically submitted at the meeting must be received **no later than 12:00 noon, June 25, 2003**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to sjvsip@listserv.arb.ca.gov and received at ARB **no later than 12:00 noon, June 25, 2003**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at ARB **no later than 12:00 noon June 25, 2003**.

The Board requests, but does not require 30 copies of any written submission. Also, the ARB requests that written and e-mail statements be filed at least ten days prior to the meeting so that ARB staff and Board members have time to fully consider each comment. Further inquiries regarding the San Joaquin Valley PM10 Plan or the proposed State commitment to support the plan should be directed Ms. Sylvia Morrow, Air Resources Engineer, at (916) 324-7163.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

CALIFORNIA REGULATORY REGISTER NOTICE ACTION DESCRIPTION FOR AN EMERGENCY RESPONSE INCIDENT AND CONSOLIDATION OPERATIONS VARIANCE ISSUED BY THE STATEWIDE COMPLIANCE DIVISION, TRANSPORTATION SECTION, FOR THE DEPARTMENT OF TRANSPORTATION— DIVISION OF MAINTENANCE

On April 30, 2003, the Department of Toxic Substances Control (DTSC), granted a regulatory exemption variance to the Department of Transportation—Division of Maintenance, a registered transporter of hazardous waste, to conduct emergency response incident and consolidation operations authorized under the California Code of Regulations, title 22, sections 66263.43 and 66263.45. The variance permits the grantee to transport emergency response and other highway spill waste to a designated central collection facility. In lieu of a manifest, the transporter shall use a shipping paper which contains all the information required pursuant to the Code of Federal Regulations, title 49, part 172, subpart C. The hazardous waste must then be manifested to an authorized facility.

CEQA EXEMPTION

The project qualifies for a CEQA exemption under Public Resources Code Section 21080(b)(1), Ministerial Projects. This variance is issued pursuant to Chapter 13, Article 4, Section 66263.40 et seq. (Regulatory Exemptions for Certain Transportation Operations), that allows for five specific types of transportation requirement exemptions. Applicants must meet preset regulatory standards. In applying these standards, DTSC only verifies specific facts regarding eligibility and may not add case-specific conditions.

The variance expires on May 31, 2004. For more information please call Maria Salomon of DTSC's Transportation Section at (916) 255-3624.

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

NOTICE OF INTENT TO LIST CHEMICAL

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) provides two mechanisms for administratively listing chemicals which are known to the State to cause cancer or reproductive toxicity (Health and Safety Code Section 25249.8(b)). One such mechanism by which a chemical may be listed is if a body considered to be authoritative by the state's qualified experts has formally identified it as causing cancer or reproductive toxicity. The following are identified as authoritative bodies for purposes of Proposition 65 as it pertains to chemicals known to cause cancer: the U.S. Environmental Protection Agency, the International Agency for Research on Cancer, the U.S. Food and Drug Administration, the National Institute for Occupational Safety and Health, and the National Toxicology Program. The criteria for listing chemicals through the authoritative bodies mechanism are set forth in Title 22, California Code of Regulations (22 CCR), Section 12306.

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency intends to list *catechol* as known to the State to cause cancer, pursuant to this administrative mechanism as provided in Health and Safety Code Section 25249.8(b) and 22 CCR, Section 12306.

Relevant information on *catechol* (CAS No. 120-80-9) was requested in a notice published in the *California Regulatory Notice Register* on September 29, 2000 (Register 00, No. 39-Z). A public forum was held on October 26, 2000. OEHHA has determined that *catechol* meets the criteria for listing under 22 CCR, Section 12306, and therefore is issuing a notice of intent to list *catechol* under Proposition 65. A document providing more detail on the basis for the listing of this chemical can be obtained from OEHHA's Proposition 65 Implementation Office at the address and telephone number indicated below, or from the OEHHA Web site at: <http://www.oehha.ca.gov/>. Anyone objecting to the listing of *catechol* as causing cancer on the basis that there is no substantial evidence that the criteria for

sufficiency of evidence as causing cancer specified in 22 CCR, Section 12306 have been satisfied should provide written comments in triplicate, along with supporting documentation, by mail or by fax to:

Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900

Comments may also be hand-delivered to Ms. Oshita at the Office of Environmental Health Hazard Assessment at the same address.

In order to be considered, comments must be postmarked (if sent by mail) or received at OEHHA (if delivered in person or sent by FAX) by 5:00 p.m. on Monday, June 16, 2003.

The following chemical has been determined by OEHHA to meet the criteria set forth in 22 CCR, Section 12306 for listing as causing cancer under the authoritative bodies mechanism:

Chemical	CAS No.	Toxicological Endpoint	Reference
Catechol	120-80-9	Cancer	IARC (1999)

REFERENCES

International Agency for Research on Cancer (IARC, 1999). *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*. Volume 71: 433–452. *Re-evaluation of Some Organic Chemicals, Hydrazine and Hydrogen Peroxide (Part Two)*. IARC, Lyon, France.

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

NOTICE TO INTERESTED PARTIES

**NOTICE OF EXTENSION OF
PUBLIC COMMENT PERIOD ON
AIR TOXICS HOT SPOTS PROGRAM—
CHRONIC TOXICITY SUMMARY
SILICA (CRYSTALLINE, RESPIRABLE)**

The Office of Environmental Health Hazard Assessment (OEHHA) has released a draft document, *Chronic Toxicity Summary for Silica (Crystalline, Respirable)* to solicit public comment. This draft document has been developed by OEHHA for use in implementing the Air Toxics Hot Spots Program (Health and Safety Code Section 44300 et seq.).

OEHHA developed four Technical Support Documents (TSDs) and a Guidance Manual pursuant to Health and Safety Code Section 44360, which provided the scientific basis for values used in assessing risk from exposure to facility emissions. The *TSD for the Determination of Chronic Reference Exposure Levels* (Part III of the TSD series), which has already undergone public and peer review and been adopted by OEHHA, describes the methodology for risk assessment for materials having adverse health impacts following chronic exposures. The present document presents a toxicity summary and chronic REL for crystalline silica, particularly when this material is composed of particles of respirable size ($\leq 10 \mu\text{m}$). If approved by the Scientific Review Panel on Toxic Air Contaminants, and adopted by the Director of OEHHA, this document will form a further addendum to the Part III TSD. OEHHA is seeking comments on the *Chronic Toxicity Summary for Silica (Crystalline, Respirable)*, including its clarity, and the appropriateness of the methodology and data on which the REL derivation is based. Following this public comment period, the document and any comments received, along with OEHHA's response to these comments, will undergo review by the state's Scientific Review Panel on Toxic Air Contaminants.

The Chronic Toxicity Summary for Silica became available on the OEHHA Home Page at <http://www.oehha.ca.gov> on April 25, 2003. The availability of the document on this site commenced a **public review period that was originally scheduled to end on May 23, 2003**. OEHHA has received requests from interested parties seeking an extension of the comment period to allow for the submittal of complete and relevant scientific material. OEHHA hereby extends the **public comment period by 30 days. It will now end on June 22, 2003**.

Public workshops for the public to comment on the summary will be held in Fresno on May 9, 2003 and in Oakland on May 20, 2003, as previously scheduled. Information on the public workshops is as follows:

DATE and TIME: May 9, 2003 from 10a.m.–2p.m.

PLACE: San Joaquin Valley Unified
APCD
1990 E. Gettysburg Avenue
Fresno, CA 93726
Governing Board Room

DATE and TIME: May 20, 2003 from 10a.m.–2p.m.

PLACE: Elihu Harris State
Office Building
1515 Clay St.
Oakland, CA 94612
Room 234, 2nd Floor

Please direct any inquiries concerning technical matters, or availability of the *Chronic Toxicity Summary for Silica (Crystalline, Respirable)*, to Dr. Andrew G. Salmon at (510) 622-3191. Please direct your written comments regarding the draft Chronic Toxicity Summary for Silica to Dr. Andrew G. Salmon (Chief, Air Toxicology and Risk Assessment Unit), Office of Environmental Health Hazard Assessment, 1515 Clay St., 16th Floor, Oakland, CA 94612, or by e-mail to asalmon@oehha.ca.gov. Information about dates and agenda for meetings of the Scientific Review Panel can be obtained from the ARB web page at <http://www.arb.ca.gov/srp/srp.htm>.

RULEMAKING PETITION DECISION

BOARD OF PRISON TERMS

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 2

PETITIONER

Bruce Senator (petitioner) submitted a petition that was received by the Board of Prison Terms (Board) on April 4, 2003.

AUTHORITY

Under authority established in Penal Code (PC) Sections (§) 3041, 3052 and 5076.2, the Board may prescribe and amend regulations for the administration of parole.

CONTACT PERSON

Please direct any inquiries regarding this action to Lori Manieri, Regulations Coordinator, Board of Prison Terms, by mail at 1515 "K" Street, Sixth Floor, Sacramento, CA 95814, by telephone at (916) 445-5277, by telefax at (916) 322-3475, or by E-mail to: regcomment@bpt.ca.gov.

AVAILABILITY OF PETITION

The petition for amendment of the regulation is available upon request directed to the Board's contact person.

SUMMARY OF PETITION

Petitioner alleges in his petition that a Board Coordinator advised him that the Board does not have jurisdiction to issue subpoenas on behalf of federal employees. The petitioner disputes this and requests

that the Board amend the California Code of Regulations (CCR), Title 15, § 2675 to state that “subpoenas may be issued to federal employees and their agencies for personal appearance and for the production of documents and things.”

BOARD DECISION

The Board denies the petition to amend 15 CCR § 2675 by stating that federal employees and their agencies may be subpoenaed for personal appearance and for the production of documents and things.

THE BOARD DENIES YOUR PETITION FOR THE FOLLOWING REASONS

One of the main reasons for amending regulations is to maintain consistency with applicable law and within the lawful authority of the agency. PC § 5076.3 gives the Chairman of the Board the authority to issue subpoenas and requires the adoption of regulations concerning those subpoenas. The Board’s existing regulations concerning subpoenas are consistent with general law. For example, 15 CCR §§ 2668(a)(1), 2675, and 2677 provide prisoners and parolees the right to call witnesses at criminal proceedings. This right includes any relevant witnesses. Title 15 CCR § 2677 requires that coordinator staff screen witness requests. Title 15 CCR §§ 2677(b) and 2668 provide criteria for staff refusal of witnesses requested by prisoners or parolees. However, no criteria specifically preclude the subpoena of federal employees or documents. Given that the Board’s regulations are consistent with general law, it appears that no amendments are necessary.

The petitioner alleges that the Board has a policy against issuing subpoenas for federal employees or agency documents. No written Board policy could be validated concerning this specific issue. The information conveyed by the Board employee may have been the result of misinformation or oversimplification. Apparently, prisoner or parolee requests for federal witnesses, or agency documents are not common. The Board finds it too burdensome to adopt additional regulations concerning such an infrequent practice. Existing regulations appear to provide sufficient guidance. Since there is no Board policy against issuing these types of subpoenas, any uncertainty on the part of Board staff can be appropriately dealt with during periodic training.

In addition, 15 CCR § 2677 gives Board hearing officers discretion to grant relief in individual cases where the prisoner or parolee demonstrates substantial prejudice from a failure to subpoena federal witnesses or documents. Lastly, 15 CCR § 2050, et seq. permits an administrative appeal after hearings by prisoners and parolees who believe the lack of the witness or documents had an adverse effect upon them.

No regulatory action appears necessary at this time, given that the Board’s existing regulations are consistent with law and do not forbid the subpoena of federal employees or agency documents. For the reasons stated above, the Board hereby denies the petition.

DEPARTMENT OF HEALTH SERVICES

May 1, 2003

Mr. Sil Reggiardo, Esq.
Downey, Brand LLP
555 Capitol Mall, 10th Floor
Sacramento, CA 95814

Re: Shield-California Health Care Center Inc.’s Petition for Repeal of the Upper Billing Limit Regulations, R-9-02E

Dear Mr. Reggiardo:

This is in response to the above-referenced petition that your firm filed on behalf of Shield-California Health Care Center Inc. (“Petitioner”) and received by the California Department of Health Services (“DHS”) on April 1, 2003.

The petition includes a request for a public hearing on the emergency regulations in the rulemaking package entitled “Upper Billing Limit, R-9-02E” (“UBL”) which were promulgated and filed by DHS with the California Secretary of State on February 27, 2003. The UBL regulations went into effect on March 1, 2003.

On April 15, 2003, DHS notified Petitioner that its request for public hearing has been granted and scheduled for April 30, 2003.

In addition to the request for a public hearing, Petitioner also submitted in its petition arguments for repeal of the UBL regulations. In this response, DHS addresses petitioner’s arguments but denies its petition for repeal of the UBL regulations.

Petitioner indicated that its petition contains statements that constitute public comment on the UBL regulations. The close of the written comment period is May 1, 2003. To the extent that statements in Petitioner’s petition relate to its arguments for repealing the UBL regulations, they will be addressed in this response. Otherwise, they will be reviewed and answered in accordance with procedures under the Administrative Procedure Act (Gov. Code § 11340 et seq.) relating to agency response to public comment.

I. DHS DENIES PETITIONER'S ARGUMENT
THAT THE UBL REGULATIONS
ARE INCONSISTENT WITH
STATUTORY AUTHORITY

The petition notes that DHS cites as authority for the UBL regulations Welfare and Institutions (W & I) Code sections 10725, 14043.75, 14105, 14105.2 and 14124.5. Petitioner's argument that the UBL regulations are inconsistent with statutory authority, however, is based solely on analysis of W & I Code sections 14105 and 14125.

W & I Code section 14105(a) provides as follows:

"The director shall prescribe the policies to be followed in the administration of this chapter, may limit the rates of payment for health care services, and shall adopt such rules and regulations as are necessary for carrying out, not inconsistent with, the provisions thereof."

W & I Code section 14125 provides as follows:

"The purpose of this article is to establish provider reimbursement rates for incontinence medical supplies covered by the Medi-Cal program. Reimbursement for incontinence medical supplies shall consist of the weighted average of the negotiated contract prices within each product category, plus a markup fee equal to 38 percent of the resulting adjusted contract price."

Petitioner contends that no regulation under W & I Code section 14105 can be inconsistent with the precise 38 percent markup under W & I Code section 14125. It argues that because W & I Code section 14105 yields to other provisions of Chapter 7 and will not allow regulations that are inconsistent with that chapter, W & I Code section 14125, not the UBL regulations, governs Medi-Cal reimbursement of incontinence medical supplies. In addition, Petitioner contends that W & I Code section 14125 deals specifically with incontinence medical supplies markups and statutory interpretation requires that the more specific statute controls over the more general statute.

Petitioner failed to include in its argument any analysis of W & I Code section 14043.75, the statute that DHS relied on and discussed extensively in the Initial Statement of Reasons (ISOR) for the UBL regulations.

W & I Code section 14043.75 provides in pertinent part:

"The director may, in consultation with interested parties, by regulation, adopt, readopt, repeal, or amend additional measures to prevent or curtail fraud and abuse."

Thus, carrying its argument forward to include W & I Code section 14043.75, Petitioner would likely characterize W & I Code section 14043.75 as the more

"general" statute to be controlled by the more "specific" W & I Code section 14125. Under this argument, DHS would be precluded from fighting fraud and abuse by adopting any regulation that varies from the 38 percent markup.

In so far as the amount of markup for incontinence medical supplies is concerned, DHS does not believe application of W & I Code section 14125 implies that W & I Code section 14043.75 would be repealed. (*Flores v. Workmen's Comp. Appeals Board*, 11 Cal.3d 171,176 (1974). "[A]ll presumptions are against a repeal by implication."); (*Garcia v. McCutchen*, 16 Cal.4th 469, 477 (1997) citing *In re White*, 1 Cal.3d 07, 212 (1969). "Absent an express declaration of legislative intent, we will find an implied repeal 'only when there is no rational basis for harmonizing the two potentially conflicting statutes [citation], and the statutes are 'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.'")

DHS' basis for adopting a reimbursement amount that varies from the 38 percent markup is explained in the ISOR, i.e., the methodology for determining the weighted average of the negotiated contract prices for incontinence medical supplies assumes that providers acquire retail products from legitimate distribution channels in the open market yet certain providers have billed the Medi-Cal program at the maximum reimbursement rates for products that they obtained at substantially below the weighted average of the negotiated contract price. DHS further explained in the ISOR that such conduct are abusive "practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the . . . Medi-Cal program. . . ." (Welf. & Inst. Code § 14043.1(a)).

Section 51520(b) of the UBL regulations provides that reimbursement for incontinence medical supplies shall be the amount billed in accordance with Section 51008.1, not to exceed the amount provided in W & I Code section 14125. Thus, even if W & I Code section 14043.75 is considered to be a general statute, DHS believes that the courts would find Section 51520(b) to have reasonably harmonized the statutes, one of which provides for a 38 percent markup for incontinence medical supplies but is silent on the issue of "abusive practices" (Welf. & Inst. Code § 14125) and the other which allows DHS to adopt regulations (e.g., § 51008.1) to fight fraud and abuse (Welf. & Inst. Code § 14043.75). (*Hough v. McCarthy*, 54 Cal.2d 273, 279 (1960). "A court must, where reasonably necessary, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all their provisions [Citations.] This rule applies although one of the statutes involved generally with a subject and another relates specifically to particular aspects of the subject.")

Unless W & I Code section 14043.75 is implemented by adoption of regulations such as UBL Sections 51520(b) and 51008.1, providers who acquire incontinence medical supplies at little or no cost will continue to bill Medi-Cal the full amount provided in W & I Code section 14125, an amount which was devised to add a 38 percent markup to the weighted average of the negotiated contract prices. The very concept of a weighted average requires some correlation between the cost to an individual provider and the contract prices negotiated by Medi-Cal. The cost, if any, to certain providers comes nowhere near the weighted average; there is no correlation between the two. Full reimbursement by Medi-Cal in these situations is clearly a repugnant result to be avoided under *Garcia*. The UBL regulations harmonize W & I Code sections 14125 and 14043.75 to allow their concurrent operation. They permit providers to obtain the reimbursement amount described in W & I Code section 14125 yet prevent reimbursement to those who obtained the products at no cost.

For the above reasons, Petitioner's argument that the UBL regulations are inconsistent with statutory authority must be denied.

II. DHS DENIES PETITIONER'S ARGUMENT THAT THE UBL REGULATIONS ARE NOT REASONABLY NECESSARY

Petitioner cites Government Code sections 11350(b)(1) and 11349 as support for its argument that the UBL regulations are not necessary.

Government Code section 11350(b)(1) provides that a regulation may be declared invalid if the following occurs:

"The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted or made specific by the regulation is not supported by substantial evidence."

Government Code sections 11349(a) defines necessity as follows:

"Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion."

DHS explained its purpose for adopting the UBL regulations in the ISOR as follows:

"The methodology for establishing the maximum reimbursement rates . . . generally consists of adding the provider's estimated acquisition to an allowable percentage markup.

This methodology was established under the assumption that providers operate under market conditions; i.e., they acquire retail products from legitimate distribution channels in the open market. . . . However, . . . enforcement efforts by the Department have revealed this assumption to be invalid. Certain providers have billed the Medi-Cal program at the maximum reimbursement rates for products that they obtained at substantially below the estimated acquisition cost or the weighted average of the negotiated contract price.

These providers' methods of billing for the acquired products end up costing the State of California more in payments than would be paid if they instead billed within the assumptions the Department used in creating the reimbursement methodology; i.e., they acquired the retail products they are billing for from legitimate distributions channels in the open market. It is the prevention of such conduct that the Department seeks to address with this regulatory proposal."

Petitioner argues that there is simply no way that the Administrative Record will demonstrate "by substantial evidence" the need for the UBL regulations to effectuate DHS' purpose as stated above.

On the contrary, the ISOR cites a number of facts that DHS used to meet the necessity standard in Government Code section 11349(a). It states, among others, the following:

- Providers have been billing the Medi-Cal program for items they did not actually purchase.
- Providers have been billing the Medi-Cal program in amounts that represent more than a 100 percent markup over their net purchase price for the products (a markup greater than any allowable markups under applicable statutes and regulations).
- Providers have been billing the Medi-Cal program at the maximum reimbursement rates for products that they obtained at substantially below the estimated acquisition cost or the weighted average of the negotiated contract price.

Over the course of the emergency rulemaking process, the Department will supplement these facts with relevant data and information including other facts, studies, expert opinion and any other appropriate documentation as necessary. However, on the basis that significant facts supporting adoption of the UBL

regulations are included in the ISOR, petitioner's argument that the UBL regulations are not reasonably necessary must be denied.

III. DHS DENIES PETITIONER'S ARGUMENT THAT THE UBL REGULATIONS HAVE A STATEWIDE ADVERSE IMPACT ON BUSINESS

Under the Economic Impact Determination heading of the Statements of Determination section, DHS states that the "Department has made an initial determination that these emergency regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states."

Petitioner disputes this assertion and contends that the UBL regulations "would likely increase provider costs, and also make significant changes to the way providers and suppliers do business." Petitioner's argument centers on the problems it sees in implementing the "net purchase price" concept of Section 51008.1.

Section 51008.1(a) provides that billing for certain products shall not exceed the lesser of the usual charge to the general public or the "net purchase price of the item, which shall be documented in the provider's books and records, plus no more than a 100 percent mark-up. . . ."

In the ISOR for Section 51008.1, DHS explained that the phrase "net purchase price" is understood by the regulated community to be the amount actually paid for an item after all discounts or rebates have been taken. Thus, for purposes of compliance with Section 51008.1(a), any accounting and tracking systems employed by providers should include (1) the purchase price, (2) applicable discounts and/or rebates and (3) the charge to the general public.

Accounting and tracking of the charge to the general public is already required under existing regulations, e.g., Section 51520. The UBL regulations impose no new cost.

Accounting and tracking of discounts and rebates is already required for manufacturers of prescribed drugs purchased under the Medi-Cal program (i.e., Welf. & Inst. Code § 14105.3). There is no reason the same concept cannot now be extended to other Medi-Cal providers. No significant statewide economic impact directly affecting business has resulted from this requirement for drug manufacturers and none is expected now.

Finally, accounting and tracking of the purchase price should already be a part of the regular business operation of any legitimate provider.

For these reasons, DHS stands by its initial determination that the UBL regulations would not have a significant statewide adverse economic impact directly affecting business.

IV. DHS DENIES PETITIONER'S ARGUMENT THAT THE UBL REGULATIONS VIOLATE CONSTITUTIONAL DUE PROCESS REQUIREMENTS

Petitioner argues that the UBL regulations "would reduce overall provider returns more than necessary to achieve the purposes of the Medi-Cal reimbursement limitations of producing ordinary rather than excessive reimbursements" in violation of due process requirements. Petitioner cites *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 165 (1976) and *Calfarm Ins. Co. v. Deukmejian*, 48 Cal. 3d 805, 819 (1989) in support of this argument.

Petitioner contends that in *Birkenfeld* the California Supreme Court held Berkeley's rent control law partially unconstitutional as drafted because the law would lower rents more than reasonably required to accomplish the law's stated purpose of eliminating excessive rents. Petitioner contends that in *Calfarm Ins. Co.* the California Supreme Court struck down as unconstitutionally confiscatory a regulation that set rate for insurers at less than a fair rate of return in order to compensate for supposedly excess profits.

In fact, in its holdings the Court never considered the issue of adequacy or reasonableness of the amount in question (rent control in *Birkenfeld*, insurance rates in *Calfarm*). In *Birkenfeld*, the Court held that Berkeley's charter amendment is unconstitutional because the city was not faced with a serious public emergency of the sort the court deemed constitutionally prerequisite to imposition of rent control under the police power. Elimination of excessive rents was never an issue considered by the Court. In *Calfarm*, the Court held that Insurance Code section 1861.01(b) cannot be sustained as a temporary or emergency measure to justify depriving insurers of adjustments necessary to achieve fair and reasonable rates. "Our concern is not with the magnitude of the problem, but with its character. The asserted rise in insurance rates, rendering insurance unavailable or unaffordable to many, is not a temporary problem; it is a long term, chronic situation which will not be solved by compelling insurers to sell at less than a fair return for a year." (*Calfarm*, at p. 821.) In *Calfarm* the Court never considered whether the level of insurance rate cap is "unconstitutionally confiscatory" as petitioner contended. Therefore, there is no merit to petitioner's

argument that the UBL regulations violate due process by reducing the amount of reimbursement to providers more than necessary.

If you have any further questions please do not hesitate to contact me at (916) 654-0589.

Yours truly,

Barbara H. Yonemura

Deputy Director and Chief Counsel

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at www.oal.ca.gov. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225—FAX (916) 323-6826. Please request by OAL file number.

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW OAL File No. 03-0317-01 S

In re:

AGENCY: Board of Equalization

ACTION: Amendment of section 1591 of title 18 of the California Code of Regulations (Gov. Code section 11349.3)

DECISION SUMMARY

This regulatory action would have amended what constitutes “medicine” under Revenue and Taxation Code section 6369, and therefore, is not taxable. On April 29, 2003, the Office of Administrative Law (OAL) notified the Board of Equalization (Board) that OAL disapproved the regulatory action because it failed to comply with the Necessity and Clarity standards contained in Government Code section 11349.1.

DATE: May 6, 2003

DEBRA M. CORNEZ
Senior Counsel

for: SHEILA R. MOHAN
Acting Director/Chief Counsel

Original: James E. Speed, Executive Director
cc: Diane G. Olson

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW OAL File No. 03-0313-02 S Insurance No. RH 399

In re:

AGENCY: Department of Insurance

ACTION: Amendment of subdivision (s) of section 2695.2 of title 10 of the California Code of Regulations

DECISION SUMMARY

The Department of Insurance (“Department”) proposed a thorough revision of its Unfair Claims Settlement Practices regulations, including an amendment to the definition of the term “proof of claim.” This rulemaking action was submitted for OAL review on March 13, 2003, and, with the exception of the above-noted definition, was approved on April 24, 2003. The proposed amendment to the definition of “proof of claim” was disapproved by OAL at the same time. The following decision explains the reason for OAL’s action disapproving the proposed change in this definition.

Date: May 1, 2003

DAVID POTTER
Senior Counsel

for: SHEILA MOHAN
Acting Director and Chief Counsel

Original: John Garamendi, Insurance Commissioner
cc: Risa Salat-Kolm, Senior Staff Counsel

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

In re:

AGENCY: State Superintendent of
Public Instruction

REGULATORY ACTION: Title 5, California
Code of Regulations
Adopt sections 18270.5, 18280, 18281
Amend sections 18023, 18272, 18273, 18274,
18275, 18279

DECISION SUMMARY

The regulatory action deals with desired results for the Child Care and Development Programs. (Prior OAL file 02-0710-02S.) On April 24, 2003 the Office of Administrative Law (“OAL”) notified the State Superintendent of Public Instruction (“agency”) that the regulatory action was disapproved for incorrect procedure. The rulemaking file does not have a Standard Form 399 (“STD 399”) that has concurrence from the Department of Finance (“DOF”).

May 1, 2003

BARBARA ECKARD
Senior Staff Counsel

For: Sheila R. Mohan
Acting Director/Chief Counsel

Original: Jack O'Connell,
Superintendent of Public Instruction

Cc: Debra Strain, Regulations Coordinator

<p>SUMMARY OF REGULATORY ACTIONS</p>

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AGRICULTURAL LABOR RELATIONS BOARD
Mandatory Mediation and Conciliation

The regulatory action deals with mandatory mediation and conciliation. The regulations are effective upon filing today pursuant to Government Code section 11343.4, subdivision (c).

Title 8
California Code of Regulations
ADOPT: 20400, 20401, 20402, 20403, 20404,
20405, 20406, 20407, 20408, 20450
Filed 05/07/03
Effective 05/07/03
Agency Contact:
Joseph A. Wender, Jr. (916) 653-4054

AIR RESOURCES BOARD
CaRFG3 Prohibitions of MTBE and other Oxygenate

This action provides a longer time frame for reaching the end point in efforts to essentially eliminate MTBE in motor vehicle fuel.

Title 13
California Code of Regulations
ADOPT: 2273.5 AMEND: 2260, 2261, 2262.6,
2263, 2272, 2273
Filed 05/01/03
Effective 05/01/03
Agency Contact: Tom Jennings (916) 322-2884

BOARD OF EDUCATION
California High School Exit Examination

In this regulatory action, the State Board of Education adopts and amends regulations pertaining to the California High School Exit Examination (CAHSEE). The regulations principally relate to CAHSEE definitions, administration, and accommodations and modifications.

Title 5
California Code of Regulations
ADOPT: 1218.5 AMEND: 1200, 1204, 1209, 1211,
1212, 1215, 1216, 1217, 1217.5, 1219, 1219.5,
1220, 1225
Filed 05/01/03
Effective 05/01/03
Agency Contact: Debra Strain (916) 319-0641

**BUSINESS, TRANSPORTATION AND HOUSING
AGENCY**

RE: Filing Corrected Changes Without Regulator
Effect, Title 25, Section 6932

This action establishes income limits (extremely low, very low, lower, median, and moderate income limits) that qualify households for various housing programs of the agency. The action is exempt from OAL review pursuant to Health and Safety Code section 50093 and is being submitted for filing with the Secretary of State and printing only.

Title 25
California Code of Regulations
AMEND: 6932
Filed 05/05/03
Effective 05/05/03
Agency Contact:
Richard Friedman (916) 323-7288

CALIFORNIA ARCHITECTS BOARD
Definitions Complaint Info. System, Form of Exams,
Education . . .

Amendment to sections 2602 and 2620 changes "school of landscape architecture" to "landscape architecture program" to more accurately reflect appropriate academic terminology. Amendment of section 2615 reflects a change in exam title from "California Section" to "California Supplemental Examination."

Title 16
California Code of Regulations
AMEND: 2602, 2615, 2620
Filed 05/01/03
Effective 05/31/03
Agency Contact: Justin Sotelo (916) 445-6573

CALIFORNIA ARCHITECTS BOARD
Definitions Through Criteria for Rehabilitation

This action amends "California State Board of Landscape Architects" to "Landscape Architect Tech-

nical Committee,” and “California Board of Architectural Examiners” to “California Architects Board” pursuant to Business and Professions Code section 5620. This action also makes various nonsubstantive editorial and grammatical changes, making these regulations internally consistent with existing regulations. These changes do not materially alter any rights, responsibilities, or conditions of existing regulations.

Title 16

California Code of Regulations

AMEND: 2602, 2603, 2604, 2606, 2610, 2614, 2615, 2616, 2620, 2620.5, 2621, 2623, 2624, 2630, 2630.2, 2630.3, 2649, 2655, 2656

Filed 05/05/03

Effective 06/04/03

Agency Contact: Justin Sotelo (916) 445-6573

CALIFORNIA HIGHWAY PATROL

Commercial Vehicle Safety Alliance

This action would amend the publication date of the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria from April 1, 2001 to April 1, 2002 to incorporate by reference the current edition.

Title 13

California Code of Regulations

AMEND: 1239

Filed 05/06/03

Effective 06/05/03

Agency Contact: Tom Lundy (916) 445-1865

**COMMISSION ON PEACE OFFICER
STANDARDS AND TRAINING**

Field Training Program

This emergency regulatory action postpones the operative date of the Field Training Program requirements, which were filed with the Secretary of State on October 10, 2002 (OAL file no. 02-0827-01 S), from July 1, 2003, to July 1, 2004.

Title 11

California Code of Regulations

AMEND: 1005

Filed 05/05/03

Effective 05/05/03

Agency Contact: Leah Cherry (916) 227-3891

DENTAL BOARD OF CALIFORNIA

RDA Educational Programs

Existing regulation sections 1070 and 1070.1 establish the requirements that registered dental assistant programs must meet in order to obtain approval by the Board. This regulatory action amends these two section and adds section 1070.2 to (1) formalize the standards contained in the program application packet and accompanying guidelines; (2) better protect consumers; and (3) reflect current dental educational needs and trends.

Title 16

California Code of Regulations

ADOPT: 1070.2 AMEND: 1070, 1070.1

Filed 04/30/03

Effective 05/30/03

Agency Contact: Linda Madden (916) 263-2300

DEPARTMENT OF BOATING AND WATERWAYS

Editorial Amendments without Regulatory Effect

These nonsubstantive amendments update obsolete organizational addresses plus minor updates to their organizational names. It also deletes its own unnecessary agency address which is readily available from five other sources.

Title 14

California Code of Regulations

AMEND: 6504, 6578.4, 6600.1

Filed 04/30/03

Effective 05/30/03

Agency Contact: David Johnson (916) 263-0780

DEPARTMENT OF CHILD SUPPORT SERVICES

Review and Adjustment of Child Support Orders

In this emergency regulatory action, the Department of Child Support Services adopts regulations governing local child support agencies and relating to the review and adjustment of child support orders. Included are provisions regarding notification of parties to child support orders of their right to request a review and adjustment, the requirements for local child support agencies conducting the review and adjustment, and the timeframes for conducting the review and adjustment.

Title 22

California Code of Regulations

ADOPT: 115500, 115510, 115520 REPEAL: MPP Section 12-223.2 through .22.

Filed 05/05/03

Effective 05/05/03

Agency Contact: Lucila Ledesma (916) 464-5087

DEPARTMENT OF CORRECTIONS

Inmate/Parole Access to Computers

The Department of Corrections is changing a cross-reference found in the captioned section based on an error made in File No. 99-0226-06S.

Title 15

California Code of Regulations

AMEND: 3041.3(b)

Filed 05/06/03

Effective 06/05/03

Agency Contact: Rick Grenz (916) 324-4331

DEPARTMENT OF FOOD AND AGRICULTURE

Informal Hearing Procedures

In this emergency regulatory action, the Department of Food and Agriculture adopts regulations setting

forth informal hearing rights, requirements, and procedures. These informal hearing provisions are applicable where the Department's Animal Health Branch makes adverse determinations in connection with specified statutory matters.

Title 3
California Code of Regulations
ADOPT: 1310, 1310.1, 1310.2, 1310.3
Filed 05/05/03
Effective 05/05/03
Agency Contact: Nancy Grillo (916) 651-7280

DEPARTMENT OF INSURANCE

California Low Cost Automobile Insurance Program

This emergency regulatory action amends the California Low Cost Automobile Insurance Program Plan of Operations to provide rates for optional uninsured motorist and medical payment coverage. (Previous OAL file #03-0103-01E)

Title 10
California Code of Regulations
ADOPT: 2498.6
Filed 05/06/03
Effective 05/06/03
Agency Contact:
Mary Ann Shulman (415) 538-4133

DEPARTMENT OF MOTOR VEHICLES

Uniform Insurance Vehicles

This regulatory action establishes the content and format of the uniform insurance card that is to be provided by insurance companies to policyholders for the policyholders to submit to the Department of Motor Vehicles as evidence of liability insurance upon application for renewal of registration of a motor vehicle. This regulation will become effective on 1/1/04.

Title 13
California Code of Regulations
ADOPT: 82.00
Filed 05/07/03
Effective 01/01/04
Agency Contact: Ann Myrick (916) 657-8857

DIVISION OF WORKERS COMPENSATION

Workers' Compensation—Audit

This is a nonsubstantive action correcting erroneous internal cross references and correction of syntax and nonsubstantive editorial changes to the text without materially altering rights, responsibilities, conditions, prescriptions, or other regulatory elements of the text.

Title 8
California Code of Regulations
AMEND: 10106.1, 10107.1, 10111.2
Filed 05/01/03

Effective 05/01/03

Agency Contact:

Destie Overpeck (415) 703-4659

DIVISION OF WORKERS COMPENSATION

Workers' Compensation—Vocational Rehabilitation

The Department of Industrial Relations, Division of Workers' Compensation, is removing the definition for "case initiation document" because this document was deleted in File No. 02-1213-06S (section 10122(b)) and subsequent relettering; correcting the layout for page 2 of the form "Request for Conclusion of Rehabilitation Benefits" Form RB-105(01/03) with no revision change (nonsubstantive change to section 10133.15); correcting page 2 of the form "Notice of Termination of Vocational Rehabilitation Services" Form RU-105 (01/03) revision changed to (05/03)(nonsubstantive change due to language found in section 10132(d)(nonsubstantive change to section 10133.16).

Title 8
California Code of Regulations
AMEND: 10122, 10133.15, 10133.16
Filed 05/01/03
Effective 05/01/03
Agency Contact:

Destie Overpeck (415) 703-4659

EMPLOYMENT DEVELOPMENT DEPARTMENT

Payment of Unemployment Compensation Benefits Appeal by Claimant

This amendment adds subsection (d)(1)(A) that was in the original 1988 rulemaking file and available to the public but was inadvertently omitted from the text filed with the Secretary of State.

Title 22
California Code of Regulations
AMEND: 1326-12
Filed 05/06/03
Effective 06/05/03
Agency Contact: Laura Colozzi (916) 654-7712

FISH AND GAME COMMISSION

Ocean Salmon

This rulemaking amends the regulations for Ocean Salmon Sport Fishing for the year 2003.

Title 14
California Code of Regulations
AMEND: 27.80
Filed 05/01/03
Effective 05/31/03
Agency Contact: John M. Duffy (916) 653-4899

OFFICE OF SPILL PREVENTION AND RESPONSE

Financial Responsibility/Fund Administration

The regulatory action is the readoption of emergency regulations that dealt with Certificates of Financial Responsibility and fees for the Oil Spill Prevention and Administration Fund. (Prior OAL File Numbers 02-1104-04E and 02-1113-01EE.)

Title 14

California Code of Regulations

AMEND: 791.7, 870.15, 870.17, 870.19, 870.21, Form FG OSPR-1972

Filed 04/30/03

Effective 05/02/03

Agency Contact:

Joy D. Lavin-Jones (916) 327-0910

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Power Plant Non-Siting Locations

This action would designate areas within the Commission's jurisdiction where the siting of thermal power plants that would generate 50 or more megawatts of power, and some or all ancillary facilities, would be precluded or limited. In addition to establishing areas which are fully designated as non-siting areas, it would establish categories for partial designation.

Title 14

California Code of Regulations

ADOPT: 11021

Filed 05/05/03

Effective 06/04/03

Agency Contact:

Ellen M. Sampson (415) 557-8784

STATE ALLOCATION BOARD

Leroy F. Greene School facilities Act of 1998—COS Design/Site

This emergency regulatory action amends the audit requirements for the Critically Overcrowded Schools (COS) program.

Title 2

California Code of Regulations

AMEND: 1859.61, 1859.105, 1859.106, 1859.141, 1859.142, 1859.145, 1859.147, 1859.148, 1859.150.1, 1859.151, 1859.152, 1859.153

Filed 05/01/03

Effective 05/01/03

Agency Contact: Lisa Jones (916) 322-1043

STATE PERSONNEL BOARD

Layoffs

This regulatory action is intended to implement the Third District Court of Appeal decision in *Connerly v. State Personnel Board* (2001), 92 Cal. App.4th 16, which found that while Government Code section

19798 is not facially invalid under equal protection principles, the more restrictive Proposition 209 would preclude the layoff and reemployment scheme authorized by Government Code section 19798 unless required by federal law or the United States Constitution or in cases where failure to employ such a scheme would result in ineligibility for a federal program with a loss of federal funds. Pursuant to section 18215 of the Government Code, this filing is not subject to all of the normal requirements of the Administrative Procedure Act nor full review by the Office of Administrative Law.

Title 2

California Code of Regulations

ADOPT: 471.1 AMEND: 470, 470.1, 471, 472, 17502, 17520

Filed 05/07/03

Effective 05/07/03

Agency Contact: Steve Unger (916) 651-8461

STATE PERSONNEL BOARD

Equal Employment Opportunity for Minorities

The action amends the terminology and guidelines for work force data collection and evaluation of equal employment opportunity and related activities within California state civil service and local agency merit systems.

Title 2

California Code of Regulations

AMEND: 547.80, 17030, 17111, 17112, 17151

REPEAL: 547.81, 17434

Filed 05/07/03

Effective 05/07/03

Agency Contact: Steve Unger (916) 651-8461

STRUCTURAL PEST CONTROL BOARD

Section 100 change Without Regulatory Effect

This is a nonsubstantive action correcting number transpositions to form citations.

Title 16

California Code of Regulations

AMEND: 1953

Filed 05/02/03

Effective 06/01/03

Agency Contact:

Delores Coleman (916) 263-2540

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN JANUARY 1, 2003
TO MAY 7, 2003**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of

CALIFORNIA REGULATORY NOTICE REGISTER 2003, VOLUME NO. 20-Z

Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

01/21/03 REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, Appendix A

Title 2

05/07/03 AMEND: 547.80, 17030, 17111, 17112, 17151 REPEAL: 547.81, 17434

05/07/03 ADOPT: 471.1 AMEND: 470, 470.1, 471, 472, 17502, 17520

05/01/03 AMEND: 1859.61, 1859.105, 1859.106, 1859.141, 1859.142, 1859.145, 1859.147, 1859.148, 1859.150.1, 1859.151, 1859.152, 1859.153

04/28/03 AMEND: 1897

04/21/03 ADOPT: 1185.02, 1186 AMEND: 1181.1, 1183, 1183.01, 1185, 1185.01, 1185.02, 1185.1, Article 6 title. REPEAL: 1185.2, 1186, 1186.1, 1186.2, 1186.3, 1188.5

04/10/03 AMEND: 18313

04/09/03 ADOPT: 18550.1 AMEND: 18225.7

04/04/03 AMEND: 599.885

04/03/03 ADOPT: 23000, 23100, 23100, 23200, 23300

04/03/03 AMEND: 599.515

04/01/03 AMEND: 52.4

03/27/03 ADOPT: 18754

03/24/03 AMEND: 321

02/28/03 AMEND: 599.931

02/27/03 ADOPT: 1859.2, AMEND: 1859.2, 1859.20, 1859.21, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, 1859.78.3, 1859.79, 1859.81.1, 1859.83, 1859.107, and 1859.145

02/25/03 REPEAL: 18707.3

02/24/03 AMEND: 18312

02/24/03 ADOPT: 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445

02/19/03 AMEND: 1859.79, 1859.79.3, 1859.81.1, 1859.83, 1859.107

02/18/03 AMEND: 18704.2

02/18/03 AMEND: 18991

02/13/03 AMEND: 1859.77.2

02/13/03 ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859, 171 AMEND: 1859.2, 1859.51, 1859.103, 1859.106, 1859.145.1

02/11/03 AMEND: 1555

02/11/03 AMEND: 1897

02/06/03 ADOPT: 1859.74.5, 1859.74.6, 1859.81.2, 14859.81.3, 1859.105.2
AMEND: 1859.2, 1859.74, 1859.76, 1859.77.1, 1859.81.1, 1859.90, 1859.103, 1859.104

02/06/03 ADOPT: 50

02/03/03 ADOPT: 649.23, 649.24, 649.25

02/03/03 AMEND: 649.11

01/30/03 ADOPT: 18530.2

01/16/03 ADOPT: 18545

01/16/03 AMEND: 18700

01/16/03 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943

01/16/03 AMEND: 18705.1

01/16/03 ADOPT: 1859.71.2, 1859.78.4, 1859.108
AMEND: 1859.50, 1859.70, 1859.72, 1859.73.1, 1859.73.2, 1859.74.1, 1859.75.1, 1859.76, 1859.78.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.100, 1859.101, 1859.102, 1859.107

01/13/03 ADOPT: 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5.1, 1866.5.2, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.9.1, 1866.12, 1866.13, 1866.14 AMEND: 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.5, 1866.5.3, 1866.7, 1866.8, 186

01/08/03 ADOPT: 18535

Title 3

05/05/03 ADOPT: 1310, 1310.1, 1310.2, 1310.3

04/24/03 AMEND: 6000, 6710

04/21/03 AMEND: 3423(b)

04/21/03 AMEND: 3417(b)

04/15/03 AMEND: 3423(b)

04/08/03 ADOPT: 760, 760.1, 760.2, 760.3, 760.4, 760.5, 760.6, 760.7, 760.9 REPEAL: 760, 765

04/07/03 AMEND: 3417(b)

04/03/03 AMEND: 300(c)

04/01/03 AMEND: 3417(b)

03/26/03 ADOPT: 797

03/20/03 AMEND: 3700(c)

02/06/03 ADOPT: 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3663.5

02/03/03 AMEND: 3700(c)

01/28/03 AMEND: 3417(b)

01/27/03 AMEND: 3700(C)

01/21/03 ADOPT: 6450, 6450.1, 6450.2, 6450.3, 6784 AMEND: 6000 REPEAL: 6450, 6450.1, 6450.2, 6450.3, 6784

01/06/03 AMEND: 1380.19(l), 1428.17, 1436.37

Title 4

04/09/03 AMEND: 1467

03/06/03 AMEND: 8072, 8074

02/13/03 ADOPT: 10151, 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162
 01/27/03 ADOPT: 12300, 12301, 12302, 12303, 12304, 12305, 12306, 12307, 12308, 12309, 12310 AMEND: 12300, 12301, 12302, 12303, 12304, 12305, 12306, 12307, 12308, 12309, 12310

Title 5

05/01/03 ADOPT: 1218.5 AMEND: 1200, 1204, 1209, 1211, 1212, 1215, 1216, 1217, 1217.5, 1219, 1219.5, 1220, 1225
 04/21/03 ADOPT: 11990
 04/15/03 AMEND: 18106
 04/14/03 AMEND: 11510, 11512.5(a)(11), 11517 REPEAL: 11510(j)
 04/07/03 ADOPT: 80020.1
 04/03/03 ADOPT: 11971, 11972, 11973, 11974, 11975, 11976, 11977, 11978, 11979, 11980
 03/18/03 AMEND: 20438, 20440
 03/12/03 ADOPT: 53207
 02/24/03 AMEND: 18301
 02/14/03 ADOPT: 54400
 01/30/03 AMEND: 80043
 01/29/03 AMEND: 31000, 31001, 31003, 31004, 31005, 31006, 31007
 01/27/03 ADOPT: 42397, 42397.1, 42397.2, 42397.3, 42397.4, 42397.5, 42397.6, 42397.7, 42397.8, 42397.9, 42397.10, 42397.11
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